* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : January 25, 2007
Date of Decision : February 6 , 2007

\+ W.P. (Civil) No. 12038-47/2006 & CM 9215/2006(stay)

\# MARBLE POINT & ORS. ..... PETITIONERS
! Through : S/Shri Jayant Bhushan, Sr. Advocate with
B.S. Maan, R. Dagar & Jai Prakash, Advocates

versus

$ DDA ..... RESPONDENT
^ Through: Mr. Anil Sapra with
Mr. Ravi Kataria, Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

: Dr. S. Muralidhar, J.

1. This writ petition is by 10 marble traders seeking a Writ of Certiorari to quash the letter dated 12.7.2006 issued by the Delhi Development Authority (DDA) to the extent that it raises a demand for the alternative plots allotted to the petitioners at the rate of Rs. 38,259/- per sq. m. The other prayer is that the demand should be scaled down to Rs. 5200/- per sq. m. on par with what has been

demanded from other similarly situated marble traders.

2. The background to this writ petition is that in 1997 these very petitioners had filed Writ Petition (Civil) No. 1674 of 1997 in this court seeking a writ of mandamus to the DDA to allot alternative shops or plots to the petitioners on the terms and conditions applicable to other equally placed 94 persons who had been held eligible by the DDA for allotment in the marble market at Papankala. This allotment was made under the scheme of rehabilitation of marble traders who had been removed from the Central South Ridge, Mehrauli Badarpur Road pursuant to certain orders passed by the Hon'ble Supreme Court in a public interest litigation (***M.C. Mehta vs. Union of India***). In W.P. (C) 1674/ 1997 an order came to be made by this Court on 2.4.2003 wherein the following directions were given:

> "The writ petition has been filed by the petitioners, who are marble traders claiming the right of alternative allotment on the basis that 94 other people located to the Central South Ridge were so allotted alternative space.
>
> Learned counsel for the respondent admits that there was no direction passed by the Hon'ble Supreme Court for making such alternative allotment to those 94 persons, but their cases were considered on certain parameters. It is, thus, stated that cases of the petitioners shall also be considered on the same parameters as those 94 persons.
>
> In view of the aforesaid, it is directed that the petitioners should make application on the proper format used to make the application by those 94 persons and cases of the petitioners shall be considered on parameteria basis within a maximum period of 3 months from today. It is made clear that only those of the petitioners, who fulfil the

said parameters and eligibility criteria, would be entitled to the alternative allotment.

The writ petition is disposed of with the aforesaid direction."

3. Consequent upon the above order, the petitioners made representations to the DDA to allot them the alternative plots. A committee was constituted by the DDA to scrutinise the applications and documents submitted by the petitioners. The committee found that the petitioners were identically placed as the 94 marble traders who had been allotted alternative plots at Sector 20, Dwarka, New Delhi. This was followed by the DDA issuing the impugned letters of allotment dated 12.7.2006 to each of the petitioners here informing them of the allotment of alternative plots of varying sizes of 250/ 230/ 210 sq. m. on leasehold basis at Rs. 38,259/- (provisional) per sq. m., at the Service Centre, Sector 20, Dwarka. Each of the petitioners was asked to deposit the sum of Rs. 33,47,663/- as the initial amount constituting 35% of the premium of the plot within 60 days of the issue of the letter.

4. It was at that stage that the petitioners filed the present writ petition questioning the basis on which the demand had been raised particularly when they were no different from the 94 marble traders who had been allotted similar plots at the rate of Rs. 5200/- per sq. m. in 1997. When the petition came up for hearing for the first time on 31.7.2006 this court, while directing notice to issue to the respondents,

made an interim order that the respondent shall not cancel the allotment if the petitioners deposited the sum at the rate of Rs. 5200/- per sq. m. subject to further orders of the court. It is stated that this amount has been deposited and the petitioners have been given possession of the plots in question.

5. The only question that now arises for determination in these writ petitions is whether the DDA is justified in demanding a sum of Rs. 38,259/- per sq. m. for the alternative plots allotted to each of the petitioners and whether they are entitled to ask for scaling down of the rate to Rs. 5200/- per sq. m. on par with the other 94 similarly placed marble traders.

6. Mr. Jayant Bhushan, learned Senior Counsel appearing for the petitioners submits that the order dated 2.4.2003 passed by this court is itself self explanatory. It records the concession of the counsel for the DDA that the cases of the petitioners "shall also be considered on the same parameters as those 94 persons." Mr. Bhushan submits that the words “same parameters” comprises not only the factum of allotment of alternative plots but also the same terms and conditions as was offered to the 94 marble traders. He submits it was on account of DDA's failure, that the petitioners here were not included in the initial list of marble traders for whom the scheme of alternative allotment was envisaged. Accordingly, there was no justification for

subjecting them to a different treatment and that the petitioners ought not to be charged only at Rs. 5200/- per sq. m.

7. In reply Mr. Anil Sapra, learned counsel for the DDA submits that the order dated 2.4.2003 does not specifically say that the rates at which these petitioners would be charged would be no different from that charged from the 94 traders. He submits that these petitioner do not have a right to an alternative allotment in the first place because they were after all encroaches on the ridge area and this alternative allotment was being made only on an equitable basis. He says that the costing has been worked out by the DDA keeping in view that these allotments were being made in 2006 at the prevalent commercial rates in the area. He says that the DDA cannot be expected to allot these plots in 2006 at the same rates at which the allotment was made in 1997.

8. In reply it is pointed out by the petitioner that there were 14 other similarly situated marble traders who had been left out of the original list of 94 marble traders and in their cases, even as recently as 2002, the DDA had made allotments of alternative plots by charging the premium at only Rs. 5200/- per sq. m. although initially a demand had been made from them at the rate of Rs. 7000/- per sq. m. The petitioners having succeeded before this court in 2003 in showing that they were no different from the 94 marble traders, the petitioners

ought not to be charged a rate higher than Rs. 5200/- per sq. m.

9. To the Court, it appears that the earlier order dated 2.4.2003 is unambiguous when it records the DDA's concession that the petitioners would be allotted the alternative plots on the "same parameters" as the 94 persons. This concession made by the counsel of the DDA led to the disposal of that writ petition where the main prayer was that these petitioners should not be treated any different from the 94 traders who had been allotted alternative plots. In the circumstances, the court fails to appreciate the submission of the DDA that these petitioners were encroachers on the ridge who were not entitled to alternative plots. It must be remembered that it was the DDA which came up with this rehabilitation scheme where it decided to draw up a list of persons eligible for such alternative allotment. Having formulated such scheme, it was not open to the DDA to adopt a pick and choose policy and leave out some of the eligible marble traders who were no different from the 94 traders who had been given alternative allotments way back in 1997. In any event, after the order of this court on 2.4.2003 it is no longer open to the DDA to contend that the petitioners are not eligible for allotment of alternative plots. The order dated 2.4.2003 having become final, the DDA having constituted a committee to consider their eligibility and that committee having found these petitioners eligible, no question of their right and entitlement to alternative plots arises for consideration any longer.

10. The only question therefore is whether the DDA is entitled to charge a rate higher than those charged to the 94 persons. Here again the fault lay with the DDA in not including these petitioners in the original list of marble traders to whom allotments were made in 1997. For no fault of theirs, these petitioners have been made to wait for over nine years for these allotments. Even as late as 2002, for 14 other similarly placed marble traders, the DDA had charged only Rs. 5200/- per sq. m. These petitioners ought to have been allotted lands in 2003 but the DDA delayed in making such allotment till 2006. It is, therefore, not open to the DDA to take advantage of its own fault and seek to charge a higher rate for the allotments made to these petitioners. The DDA must be bound down by its undertaking given before this court on 2.4.2003 that it would consider the case of the petitioners on the "same parameters" as those 94 persons. That being the case, the petitioners are entitled to succeed in this writ petition and it is accordingly held that they cannot be charged at a rate higher than Rs. 5200/- per sq. m.

11. Accordingly the writ petition is allowed. The impugned demand letters dated 12.7.2006 are quashed to the extent they raise a demand higher than Rs. 5200/- per sq. m. Each of the petitioners already having paid the said sum pursuant to the interim direction passed by this court and having taken possession of the alternative plots, no further directions are required to be made in that regard. The DDA

should complete the documentation, if not already done, to convey the leasehold rights in favour of the petitioners.

12. Writ petitions are accordingly allowed with no orders as to costs.

Sd/-
S.MURALIDHAR, J.

February 6, 2007
ns